

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

CRYSTAL V.L. RIVERS,

Plaintiff,

v.

UNITED STATES,

Defendants.

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Case No. 6:18-cv-00061

**UNITED STATES' MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO  
SUBSTITUTE THE UNITED STATES AS PARTY DEFENDANT FOR DEER,  
PRILLAMAN, THE INTERVAL REVENUE SERVICE, AND  
THE FEDERAL BUREAU OF INVESTIGATION**

The United States of America respectfully requests the Court substitute it as party defendant for Karen Deer, Mary Lou Prillaman, the Internal Revenue Service, and the Federal Bureau of Investigation with regard to Plaintiff's claims under the Federal Tort Claims Act, 28 U.S.C. § 2670 *et seq.*

1. Deer and Prillaman are IRS employees who Plaintiff alleges negligently failed to indict and prosecute certain crimes of which she was a purported victim. Sec. Am. Compl. ¶¶ 194-195, 198, 256-63, 274, 329, 353, 404, 417. She alleges Deer and Prillaman were negligent "while acting within the scope of their office or employment by the [ ] IRS." *Id.* ¶¶ 11, 16-17. She alleges they are liable for "failing to protect [her] and prosecute the parties they investigated." *Id.* ¶ 162.
2. The FTCA provides a limited waiver of sovereign immunity for tort actions against the federal government. A suit against the United States is the exclusive remedy for persons with claims for damages resulting from the negligent or wrongful acts or omissions of federal employees acting in their official capacity. 28 U.S.C. § 2679(b)(1). Under the Westfall Act, the only proper party defendant in an action against a federal employee acting in their official capacity is the United States. 28 U.S.C. § 2679(d)(1). When a tort suit names a federal employee as a defendant, the Attorney General or his designee can certify the employee was acting within the scope of their employment at the time of the conduct on which the suit is based. 28 U.S.C. § 2679(d)(2). The Attorney General has delegated certification authority to the United States Attorney. 28 C.F.R. § 15.4. Upon certification, the United States is substituted in place of the employee defendant. *Hayden v. United States*, 2002 WL 449755, at \*4 (W.D. Va. Mar. 22, 2002) (Jones, J.);

*see also Smith v. United States*, 2018 WL 6422473, at \*1 (W.D. Va. Dec. 6, 2018) (Dillon, J.)

3. The United States Attorney for the Western District of Virginia, Thomas T. Cullen, has certified that Deer and Prillaman were acting within the scope of their employment at all times related to the allegations in this case. Certification, Ex. 1. The United States is properly substituted for Deer and Prillaman as to Plaintiff's tort claims, and all claims against Deer and Prillaman in their official capacities must be dismissed for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1).
4. The IRS and the FBI also are not proper defendants in FTCA actions. "The authority of any federal agency to sue and be sued in its own name shall not be construed to authorize suits against such federal agency on claims which are cognizable under section 1346(b) of this title, and the remedies provided by this title in such cases shall be exclusive." 28 U.S.C. § 2679. Because the FBI and the IRS are not proper parties to this case, all claims against them should be dismissed under Federal Rule of Civil Procedure 12(b)(1).<sup>1</sup>

The United States respectfully requests entry of the accompanying proposed Order dismissing this action against Defendants Deer and Prillaman, and substituting the United States for the FBI and the IRS.

Respectfully submitted,

THOMAS T. CULLEN  
United States Attorney

Date: November 12, 2019

/s/ Sara Bugbee Winn  
Sara Bugbee Winn  
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<sup>1</sup> The claims remaining in this case against Federal actors are Plaintiff's tort claim against the United States and Plaintiff's constitutional claims against Deer and Prillaman in their individual capacities, which will all be the subject of a Motion to Dismiss.

CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2019, I caused a true copy of the foregoing Motion to Substitute the United States of America as Party Defendant for Karen Deer, MaryLou Prillaman, Internal Revenue Service, and the Federal Bureau of Investigation to be electronically filed with the Clerk of the Court using the CM/ECF system, and mailed a copy thru the United States Postal Service to the following non-CM/ECF participant:

Crystal VL Rivers  
3831 Old Forest Road, Suite 6  
Lynchburg, VA 24501

/s/ Sara Bugbee Winn

Sara Bugbee Winn  
Assistant United States Attorney